

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 17-CR-33-JDP

RAYMOND K. BROWN,

Madison, Wisconsin

December 21, 2017

Defendant.

11:11 a.m.

STENOGRAPHIC TRANSCRIPT OF SENTENCING
HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

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Also appearing: RAYMOND K. BROWN, Defendant
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United States District Court
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1 (Proceedings called to order at 11:11 a.m.)

2 THE CLERK: Case No. 17-CR-33-JDP, *United States of*
3 *America v. Raymond Brown*, called for a sentencing. May we have
4 the appearances, please.

5 MS. ALTMAN: Good morning, Your Honor. The United
6 States appears by Elizabeth Altman and Darren Halverson, and
7 also with us this morning is Wayne Jackowski, special agent with
8 the FBI.

9 THE COURT: Very good. Good morning to you.

10 MR. MOYERS: Peter Moyers from Federal Defender
11 Services, and seated here to my left is Mr. Brown.

12 THE COURT: Mr. Brown, Mr. Moyers, good morning to you.

13 MR. MOYERS: Good morning.

14 THE COURT: Also let the record show that Jessica
15 Harris, the probation officer who prepared the presentence
16 report, is with us here in the courtroom today.

17 Let's do a quick rundown of what I've looked at to make sure
18 I haven't missed anything here, but I have got the presentence
19 report, an objection from the -- both the defendant and the
20 government. I've got an addendum to the presentence report and
21 a revised presentence report. I've got a sentencing memorandum
22 on behalf of Mr. Brown, and then I've also got a written
23 allocution from Mr. Brown as well, and then also with the
24 sentencing memo I think there were some additional documentation
25 verifying Mr. Brown's employment history.

1 That's what I've looked at. Is there anything that I've
2 missed --

3 MS. ALTMAN: No, Your Honor.

4 THE COURT: -- Ms. Altman? Mr. Moyers?

5 MR. MOYERS: No, Your Honor.

6 THE COURT: All right. Very good. All right. Let's
7 find out who I'm going to hear from today. Anybody -- are there
8 any victim witnesses? I thought I had heard that we might have
9 a witness.

10 MS. ALTMAN: You had heard that correctly, Your Honor.
11 We have spoken to the victim's family a number of times, him and
12 his aunt. They have determined that it would not be healthy for
13 the victim to be here himself. We thought the aunt was going to
14 appear, but we have not seen her yet today.

15 THE COURT: Okay. All right. So if she shows up,
16 we'll give her a chance to speak if she wants to.

17 And, Mr. Moyers, anybody besides you and Mr. Brown today?

18 MR. MOYERS: Just me, Your Honor.

19 THE COURT: All right. Very good.

20 All right. Mr. Brown, I need to make sure that you have
21 read the presentence report and the revised presentence report
22 and talked it over with your attorney. Have you done that?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. And do you have any other concerns
25 with the presentence report that haven't been communicated to

1 me?

2 THE DEFENDANT: No.

3 THE COURT: Okay. Very good. All right. So I'm going
4 to adopt the facts in the presentence report as the facts on
5 which I will base my sentence. I want to hear from Mr. Moyers
6 about some of his concerns about some of the evidence that's
7 substantially Facebook evidence, but I haven't gotten any
8 objections on the factual portions of the presentence report
9 other than the corrections that were made in the addendum. So
10 I'm going to embrace the presentence report as revised as the
11 factual basis for my sentence.

12 I'm also going to accept the plea agreement on the basis of
13 my findings that the offense of conviction is one that
14 adequately reflects the defendant's criminal conduct and the
15 plea agreement does not undermine the statutory purposes of
16 sentencing. In determining Mr. Brown's sentence, I will take
17 into consideration the advisory sentencing guidelines and the
18 statutory purposes of sentencing that are set out at Title 18 of
19 the United States Code in Section 3553(a).

20 And I believe that we've resolved all the issues that go to
21 the guideline calculation; is that correct, Ms. Altman?

22 MS. ALTMAN: I believe so, Your Honor.

23 THE COURT: Mr. Moyers, do you agree?

24 MR. MOYERS: Yes.

25 THE COURT: Okay. And so with that clarification then

1 that there's not a multicount analysis and starting from the
2 base offense level that was agreed on in the plea agreement,
3 which is 28, then we've got correctly calculated -- starting
4 from that, correctly calculated guidelines. Base offense level
5 is 28, as I said, pursuant to the plea agreement. Two levels
6 are added because the defendant was at least ten years older
7 than the Known Victim No. 1. Two levels are added under
8 guideline 2G1.3(b)(3) because the defendant used Facebook to
9 communicate with and arrange transportation of a sexual act.
10 Two levels are added because Known Victim No. 1 performed sex on
11 the defendant. No other Chapter Two adjustments apply, so the
12 adjusted offense level is 34.

13 The victim performed sex on the defendant on two separate
14 occasions; therefore, five levels are added under guideline
15 Section 4B1.5(b)(1) because the defendant is a repeat and
16 dangerous sex offender against minors. The defendant qualifies
17 for what I anticipate will be three levels of downward
18 adjustment, two because he's demonstrated acceptance of
19 responsibility for his offense by entering a timely plea
20 agreement, and I believe the government has moved for an
21 additional one-level reduction or will; is that correct?

22 MS. ALTMAN: Yes, Your Honor.

23 THE COURT: Okay. So that's a total of three levels of
24 downward adjustment for acceptance, so we end with a total
25 offense level of 36. There's a criminal history category of VI

1 here in this case, and that makes the guideline imprisonment
2 range 324 months to 405 months. However, the statutorily
3 authorized maximum sentence of 20 years is less than the maximum
4 of the guideline range. Therefore, the statutory maximum has an
5 impact on the actual guideline calculation. That makes the
6 guideline range 240 months, and that's pursuant to guideline
7 Section 5G1.1(c)(1). So that's where we land on the guidelines.

8 Just for comparison purposes too, if not for the plea
9 agreement on the base offense level being 28, we would have a
10 guideline range of 210 months to 240 months if we started with
11 the base offense level that would be 24 just based on the
12 offense of conviction as the starting point there. But pursuant
13 to the plea agreement, which I think is reasonable in light of
14 the way the case was charged, the guideline range is actually
15 240 months.

16 So that's where we land on the guidelines, so let me get the
17 input of counsel about what sentence I should actually impose.
18 Ms. Altman?

19 MS. ALTMAN: Thank you, Your Honor. At first I want to
20 address a couple things in the defendant's sentencing memorandum
21 before I look at the 3553(a) factors, although this does
22 incorporate the factors into my argument as well.

23 First, the idea that the defendant is not a typical
24 enticement offender, I'm not sure that there is a typical
25 enticement offender, and to the extent that this defendant may

1 or may not be or whether there is or isn't, we know what this
2 defendant did, and whether it's typical among others doesn't
3 really matter.

4 To the idea that the defendant has an IQ of 74, based on
5 what we have seen in his past, what we have seen on the video,
6 that -- he doesn't seem like someone with an IQ of 74. The test
7 was 20 years ago, and I know that IQs typically don't change but
8 perhaps the methodology does. He's held jobs. He's gotten a
9 driver's license. I believe that the Court saw the interview
10 with him. He appeared to understand all the questions. He
11 answered responsively. There was no real indication of any sort
12 of mental challenge significant that I would submit in that
13 interview.

14 Third, whether he does have an IQ of 74 or not, there's no
15 dispute, and he admits, that he relates better to younger
16 people, and, quite frankly, that is what makes him dangerous,
17 and that isn't going to change while he's in prison,
18 particularly if it is an IQ issue. If he gets out when he's 44,
19 he's still going to relate better to younger people. If he gets
20 out when he's 45 or 50, he's still going to relate better to
21 younger people, and that makes him more likely to reoffend no
22 matter what his mature age is. If, as the defendant argues, we
23 have to look at his mental age and he wants to be around young
24 boys, 14-year-old teenage boys, that's who he's going to be
25 around when he gets out no matter what, and that creates a big

1 problem, and that means that he needs to be in custody as long
2 as possible to protect the public.

3 With regard to whether the Court can/should consider the
4 physical abuse allegations detailed in the presentence report,
5 the defendant claims that the Court can be certain the
6 allegations are false because the defendant was never charged.
7 That's just simply a flawed premise to begin with. Simply
8 because charges weren't brought doesn't mean they didn't occur.
9 We have experienced in this case, and I think the Court can see,
10 these cases are hard to charge, hard to prove. In the
11 allegations specifically noted, the victims were given alcohol.
12 They didn't know what happened. They thought things might have
13 happened. The situations are he said/he said, and as we have
14 seen in this case, the victims are hesitant to testify. The
15 victim in this case didn't want to come today and tell the Court
16 what had happened. They're embarrassed. It's hard for them to
17 talk about. They're 15 years old. Simply because there wasn't
18 prosecution doesn't mean that it didn't happen.

19 And I would submit that the evidence contained in the PSR
20 establishes sexual contact with other minors, particularly in
21 paragraph 59 the defendant talks to a 13-year-old boy -- or who
22 appears to be a 13-year-old boy, who identified himself as a
23 13-year-old boy, that he did a good job performing oral sex last
24 time. That sure seems to indicate that there was prior sexual
25 contact.

1 Now, again, going back to the idea that the boys don't want
2 to talk about sexual contact with anybody, let alone grown men,
3 the person whose Facebook account that was, initials J.M., he
4 denied the activity, but the Facebook messages sure seem to make
5 it pretty clear that it did happen. So I think the Court can
6 put some confidence in those allegations, but even if you don't,
7 even if you totally discard the allegations of other prior
8 sexual contact, contact only, the 3553(a) factors and the nature
9 of this offense itself warrants a 20-year sentence, the maximum
10 the Court can give, even if you don't consider the allegations
11 of physical contact.

12 This case involved a 14-year-old boy and a second boy, who
13 we believe to be underage even though we were never able to
14 identify him. The defendant admitted that he thought he was
15 underage, and our victim, who we did identify, said he believed
16 him to be 15 or 16. The messages show and the defendant admits
17 this was not the first sexual encounter with KV No. 1. The
18 defendant gave the boys in this case marijuana. KV No. 1 said
19 that the marijuana was different from other marijuana he had
20 used in the past, possibly indicating it had been laced with
21 something. According to KV No. 1, the second boy wanted to
22 leave, but the defendant wouldn't take him home, and, again,
23 that is based on something that KV No. 1 said, his recount of
24 the events, but every single thing that KV No. 1 said was
25 corroborated to -- down to the sexual contact with the semen

1 being detected in the sexual assault exam, so there's absolutely
2 no reason to believe that that particular statement that he made
3 about the incident is not true.

4 THE COURT: That one -- that one is fairly directly
5 disputed, even in the presentence report, by the defendant
6 himself.

7 MS. ALTMAN: It is --

8 THE COURT: I mean, there's a lot that is admitted, but
9 that kind of particularly coercive, not letting the victims
10 leave, that part of it is directly disputed by Mr. Brown.

11 MS. ALTMAN: I would agree with that, but I would
12 submit that the victim is more credible on that particular area
13 based on everything else, that he was corroborated in every
14 other way. The victim's version of events and how things
15 happened were corroborated by the sexual assault exam with the
16 semen being found in his anus. The defendant, when he initially
17 provided statements about this, wouldn't even admit that sexual
18 contact occurred, so I would submit that the victim's account is
19 much more credible along those lines. I do understand that it's
20 disputed, but I think the Court can find, based on everything
21 else, that the other boy tried to leave, and KV 1 says he
22 himself was scared once things changed at the hotel.

23 There's no dispute that KV 1 went with him willingly,
24 although he is only 15; you can't really say consensually. He
25 went with him willingly. He knew what was going to happen.

1 That's clear from the Facebook messages, that there was going to
2 be a threesome, but he said that once things got weird at the
3 hotel, he wanted to leave, and the defendant wouldn't let him
4 go.

5 THE COURT: Yes.

6 MS. ALTMAN: Looking at the history and characteristics
7 of the defendant, he has a lengthy criminal history. As a plus,
8 he has been able to maintain employment through his adult life,
9 and that certainly is a positive factor. However, I would note
10 that it's the type of job that he generally worked in where most
11 of his co-workers were likely to be teenagers, boys, girls.
12 That's generally the type of co-workers you would have in the
13 fast food industry.

14 Additional characteristics of the defendant, even if you
15 want to say that there was no sexual contact with anybody else,
16 there were hundreds and hundreds of sexual messages with minors,
17 and those are detailed in the Facebook messages. Those can't be
18 disputed. And we only have the Facebook messages for
19 two-and-a-half months. We only got it from January of 2017
20 until the date that the minor was recovered, and during that
21 time the defendant communicated with more than 30 boys between
22 the ages of 13 and 18, and in all of these messages, he would
23 ask the age of the boy, and then generally he would tell the boy
24 that he was 19 and say "Age ain't nothing but a number,"
25 acknowledging that even an age difference of 19 and 13 and 19

1 and 15 was a pretty vast age difference, let alone the
2 defendant's true age.

3 In many of these messages, he sent pictures of his penis.
4 He sent pictures of his buttocks. He asked the boys for similar
5 pictures, and each time a boy sent him a picture of himself, the
6 defendant was receiving child pornography, which is a crime in
7 and of itself. The defendant's conversations with KV 1 and
8 these other boys show his plan was manipulative, show it was
9 thought out, it was formulaic. He did it every time. There
10 were multiple reports of him providing drugs and alcohol to the
11 teenage boys. We know that he provided marijuana to the boys in
12 this case, which would lend some credence to those other
13 reports. It also seems to be confirmed by some of the Facebook
14 messages.

15 In the defendant's interview, he showed really no remorse
16 for the activities that took place in this case, really a
17 complete lack of understanding really that having relationships,
18 sexual contact, with minors was wrong, and that really is what
19 makes him dangerous. The complete lack of awareness that he
20 should not be around teenage boys providing them with marijuana,
21 driving them around in their cars, and having sexual contact
22 with them makes him a tremendous, tremendous danger to the
23 community when he gets out no matter how old he is.

24 The government submits that he should be kept in custody as
25 long as possible, quite frankly, to protect the community, and

1 in this particular case, that's 20 years, which, as the Court
2 noted and I would note, is far beyond the advisory guideline
3 range in this case.

4 THE COURT: Far below.

5 MS. ALTMAN: Far below. What did I say, above? Far
6 below.

7 THE COURT: Yes. All right. Very good. All right.
8 Thank you, Ms. Altman.

9 Okay. Mr. Moyers?

10 MR. MOYERS: I guess I'd ask the Court would you like
11 me to start with, I guess, the Facebook messages that you've
12 alluded to at the beginning or --

13 THE COURT: Well, let me -- I have a few questions for
14 you.

15 MR. MOYERS: Sure.

16 THE COURT: Let's do it that way, and that way you kind
17 of can address my concerns. Your sentencing memorandum
18 indicates that it would be reversible error if I were to fall
19 into two pitfalls --

20 MR. MOYERS: Yes.

21 THE COURT: -- and that is to consider the physical
22 abuse allegations in paragraphs 52 through 120 and also that --
23 the second pitfall that you identify is how I should interpret
24 the statement that the defendant made that he likes to "chill"
25 with younger people.

1 MR. MOYERS: Yes.

2 THE COURT: And so let's just frame the discussion this
3 way: I really rely on counsel to tell me if I'm going to commit
4 an error that would --

5 MR. MOYERS: Yes.

6 THE COURT: -- make my sentence unsound so I can count
7 on that. But, taking the second pitfall, I can't understand how
8 it could possibly be reversible error for me to consider his
9 statement that he likes to "chill" with younger people when you
10 say that "From the mouth of some offenders, the remark might be
11 haunting."

12 MR. MOYERS: Yes.

13 THE COURT: And so it seems to me a fair argument to
14 try to interpret that statement by the defendant and try to make
15 sense of it.

16 MR. MOYERS: Yes.

17 THE COURT: But I don't see how I would commit
18 reversible error to consider that to be a statement that is
19 consistent with a sustained sexual interest in minors. How
20 would I be committing reversible error if I thought that is
21 consistent with his demonstrated conduct on Facebook?

22 MR. MOYERS: Because of all the other circumstances.
23 You saw that, the Court did, saw the interrogation, saw the
24 video. It is clear that what he means is -- he's not talking
25 with the agents at that point about his sexual interests or what

1 he -- I guess, going deeper dark into his soul about what his
2 intention is. He's talking about -- or they're asking him,
3 "Hey, you seem to spend a lot of time around minors." Agent
4 Fleming is asking him, "I have been through your Facebook
5 messages for the last two-and-a-half months. What are you doing
6 talking to all these minors?" And he, Mr. Brown, says, "Look, I
7 like to chill with them because they don't have those adult
8 concerns like, you know, jobs and families," and I think it's
9 absolutely clear that the Court not read the statement in a, I
10 guess, decontextualized or unmoored state as some naked
11 representation or naked baring of his soul that says, "Yeah, I
12 really, really like -- I'm really sexually interested in
13 minors."

14 I think what he's talking about there is that it's social,
15 and it's such a damaging remark taken out of context and so
16 subject to abuse that I think it would be -- I mean, I think
17 it's unreasonable to conclude as a matter of fact, you know,
18 based on the preponderance of the evidence that it's a remark
19 about his sexual interests and, you know, how he's propelled or
20 what his impulses are with regard to younger boys.

21 THE COURT: It's a fair argument to try to get me to
22 see that in context, but I can't understand how I would be
23 committing reversible error to understand that remark in the
24 context of his Facebook messages in which he has engaged in many
25 over a two-and-a-half-month period -- that was the only sample

1 that we had -- sexually explicit communications with many people
2 that he identified and verified were minors.

3 So, like I say, I look to counsel to make sure that the
4 legal parameters -- you're free to argue what you want, but if
5 you tell me I'm going to commit a legal error, I really want to
6 know it, and I'm very concerned about the two-and-a-half pages
7 in your brief under the heading that says "to avoid reversible
8 error" I have to avoid considering certain things, and I am not
9 at all persuaded that I would be committing reversible error to
10 understand that the statement that he likes to spend time with
11 younger people doesn't relate to his sexual interest in them.

12 The second concern that I have then is the allegations in
13 paragraphs 52 through 120 --

14 MR. MOYERS: Yes.

15 THE COURT: -- which are based substantially on
16 Facebook records, and so I want to understand exactly what
17 you're saying here because I have a couple of observations here.
18 One is that you didn't object -- during the time for objections
19 to the presentence report --

20 MR. MOYERS: Yeah.

21 THE COURT: -- you did not lodge any objections --

22 MR. MOYERS: No.

23 THE COURT: -- that those allegations were false.

24 MR. MOYERS: Uh-huh.

25 THE COURT: And so when I get to the presentence report

1 and I have, you know, 70 paragraphs of allegations that have not
2 been objected to --

3 MR. MOYERS: Uh-huh.

4 THE COURT: -- I think that I'm entitled to take those
5 objections [verbatim] at face value. So maybe your smaller
6 point is or it's a more focused point that there's evidence and
7 assertions in those paragraphs that he had sexual contact with
8 other minors and that that is not established to a preponderance
9 of the evidence, and so if that's the smaller point, then I
10 think -- if that's the more focused point, I think that's maybe
11 a fair point, although I still have to make decisions about
12 what's established to the preponderance of the evidence, and I
13 can consider hearsay in sentencing. So it's still not quite
14 clear to me that even if I were to determine that, to a
15 preponderance of the evidence, it's established that he had
16 sexual contact with other individuals who were minors, that
17 that -- even that would be reversible error.

18 So you tell me -- I want to know, first, what is the
19 reversible error that you want to identify for me, and then why
20 is it that I couldn't find to a preponderance that he had sexual
21 contact with other individuals when it seems to be the clear
22 implication of some of the Facebook comments.

23 MR. MOYERS: First of all, with regard to the Facebook
24 comments, I'll just get that out of the way. Those are what
25 they are. We don't dispute those. What we're talking about

1 here and what I wrote in the sentencing memo is that we're
2 talking about allegations of physical abuse, and what we're
3 talking about here is -- you know, the implications or the
4 concern here is that, oh, here is this litany, here is this
5 series of victims, and you have to be -- the Court has to be
6 very, very careful in this context because the language
7 obviously is inflammatory. It makes us -- it should make us
8 uncomfortable, but that's not a stand-in for proving, yes, this
9 kind of act happened with this person at -- you know, in this
10 general time frame, and that's very important because our
11 intuitions, even mine and I'm a defense attorney, is, well, I
12 guess if there's smoke, there's fire; it must have happened.
13 And, you know, the concern or the pitfall here is that you're
14 going to -- the Court is going to relax its standards based on,
15 well, you know, this is probably what was going on and --

16 THE COURT: I would agree with you if what I were
17 looking at were the rumors in the community that he had engaged
18 in sexual activity with young people. That to me comes nowhere
19 close to being substantiated to a preponderance of the evidence,
20 but when I have paragraph 59 and there are -- there's a
21 conversation about "sucking dick" with a minor and the defendant
22 says undisputedly, "Shit, you did a good job last time," that
23 seems to suggest that, in fact, there was oral sex performed by
24 this minor, and that is not -- that's words that are uncontested
25 that came from the defendant posted in a Facebook message.

1 MR. MOYERS: Yes, and that's one interpretation of it.
2 You could think that. I don't know who this particular user is.
3 I don't know where he lives. I don't know if they were just
4 talking -- you know, if they were just engaging in, you know, I
5 guess, fantasy role play. I mean, when --

6 THE COURT: Some that's clearly true. The young man
7 that's in New York, there's no allegation that there was ever
8 any physical contact with that individual in New York, but this
9 one is different because it seems to, in the very context of the
10 conversation, suggest that there had been a history of sexual
11 contact between these two people.

12 MR. MOYERS: The Court -- it could read it that way,
13 and our view is that that would be a mistake because, look, the
14 language there, not great, but what we're talking about here is
15 whether -- the implication, I guess, is -- and maybe this gets
16 back to the larger argument, which is in all those paragraphs,
17 it is -- the concern I wanted to highlight generally for the
18 Court is just because there are these -- that there is a lot
19 of -- there's a lot of evidence that looks really bad clustered
20 around a bunch of different people, it certainly doesn't mean
21 that they're all true or even mostly true or, you know, true at
22 all.

23 THE COURT: In fact, you go way further than that in
24 your sentencing memo, and you say they're all demonstrably
25 false.

1 MR. MOYERS: Yes. And, look, I think the evidence
2 shows that in this case because, if you remember from the
3 interrogation video, is that the FBI agents -- the reason they
4 keep pressing him for the names and for specifics is because
5 once they know that there's a victim out there, they can't
6 just -- they can't just do nothing, you know. They don't get
7 into the business of being an FBI agent to just sort of turn a
8 blind eye or say, "Well, there's a victim here but not enough."
9 No, they go after him. They investigate these cases.

10 THE COURT: There's a record here that the Rockford
11 police investigated them too --

12 MR. MOYERS: Sure.

13 THE COURT: -- but I think Ms. Altman's point is being
14 able to investigate one of these doesn't mean that you can bring
15 charges for sex abuse. Often the victims are embarrassed. They
16 don't want to talk about it. They deny it, and so I can't infer
17 from what I read in this report that there's some sort of
18 dereliction of duty on the part of the Rockford police.

19 MR. MOYERS: No. That's exactly my point. It's that
20 there wasn't and that they --

21 THE COURT: But the fact that there were no charges
22 that emerged from it doesn't mean that the acts didn't occur.

23 MR. MOYERS: No, but I think you can --

24 THE COURT: The standards were higher --

25 MR. MOYERS: No, not necessarily, but what my point is

1 is there are incentives in the system, both personal and
2 within -- you know, even sort of democratic. Like, the district
3 attorney in Rockford -- I guess that's Winnebago County -- the
4 district attorney in Rock County, Beloit, they don't get elected
5 by taking a knee on crimes and allegations that are this
6 serious, and law enforcement works very hard -- I mean, the
7 discovery in this case was substantial. They go after it, and
8 what I'm trying to tell you is that because those incentives
9 show you that, look, this was not under-investigated -- it's not
10 because they were too busy or that Rockford was overwhelmed --
11 the point is that, look, they have strong incentives to bring
12 these cases, and they didn't, and so maybe that point is too
13 indirect or subtle, but, no, I can't necessarily say to you,
14 "Hey, none of this ever happened" just because there weren't
15 charges brought. I think that misreads my point. My point is,
16 look, you have to look at the surrounding circumstances, and
17 when you have highly trained, you know, experienced
18 investigators at two levels of government who are looking at
19 this stuff and then nothing can happen, especially when it's a
20 serious crime like this -- we're not talking about
21 shoplifting -- that can tell you something.

22 THE COURT: All right. I take your point. I don't
23 know that it carries me -- I understand your argument. I don't
24 think it carries me as far as you'd like it to, but let me --
25 here is another concern that I have.

1 MR. MOYERS: Sure.

2 THE COURT: I do see the reference in I think it is
3 paragraph -- let's see here -- paragraph 218 is the paragraph
4 that contains the reference to Mr. Brown's IQ.

5 MR. MOYERS: Uh-huh.

6 THE COURT: And so here is my issue: So I have one IQ
7 test taken when Mr. Brown was 14 years old that shows a
8 full-scale IQ of 74.

9 MR. MOYERS: Yes.

10 THE COURT: And so one of your arguments in mitigation
11 here, in fact, maybe your main argument in mitigation, is that
12 he's a cognitively impaired individual with a borderline IQ, and
13 so that should be a mitigating factor. And, yet, Mr. Brown did
14 not consent to the release of all of his mental health records,
15 so rather than having a really comprehensive view of Mr. Brown's
16 mental health, I've got one IQ test from when he's 14 years old,
17 and I don't have the full record of his mental health to make an
18 assessment about whether this one IQ test accurately reflects
19 his cognitive abilities.

20 You've made many statements about how there was a lack of
21 guile in the interview, which I had to look at in connection
22 with the suppression motion, but -- to a point I agree with you
23 that there wasn't a keen level of guile there, but I did not
24 come away from the interview thinking that Mr. Brown was
25 cognitively impaired just based on his conversation and his

1 conduct during that interview. I look at his record here. He
2 does not seem to me to be a person who is borderline impaired,
3 and it concerns me that you're trying to make an argument in
4 mitigation based on his mental state without really fully
5 disclosing all of his records and giving me a fair chance to
6 determine whether I have somebody who really is so impaired that
7 it should mitigate his culpability for a serious crime.

8 MR. MOYERS: A couple of points: First of all, it may
9 not be apparent to you what his challenges are. It's very
10 common for people that have those kind of challenges to develop
11 ways of concealing them or getting through or getting by, and
12 that happens all the time. I mean, I'm constantly surprised as
13 a defense attorney how long it can take me to figure out that
14 somebody can't read, for instance, and so --

15 THE COURT: I can accept that, but I guess my question
16 then is why not make a fulsome showing to me of what his
17 limitations are?

18 MR. MOYERS: Yes.

19 THE COURT: You're totally entitled to withhold the
20 consent --

21 MR. MOYERS: Yes.

22 THE COURT: -- but then if you want to make an argument
23 about his mental condition --

24 MR. MOYERS: Uh-huh.

25 THE COURT: -- it just doesn't resonate as powerfully

1 as it would if I had a really good picture of his full record.

2 MR. MOYERS: You're right and -- but I can't pick and
3 choose what gets released or, you know, even get to see it in
4 the first instance. And, look, Mr. Brown was candid with me
5 from the beginning that he'd been seeing counselors and that he
6 had been -- I guess he's been on different medications, and it
7 would be -- yes, does that undercut my argument here in
8 mitigation? Yes, definitely. But I'm not going to -- that's a
9 choice that the defense had to make about whether I want him to
10 keep going to counseling. I want him to be able to deal with --
11 you know, this is a stressful situation.

12 And so, yes, would it be better for the Court or would my
13 argument have more force if it had more information? Sure, but
14 I'll get to my final point, which is all the time in all sorts
15 of cases there are mental health records, Department of
16 Corrections records that come in and that are, you know, just
17 taken at face value, and finally we have something here -- taken
18 at face value when they show things about the defendant that are
19 aggravating, not mitigating. And then suddenly the government
20 is urging the Court to say, "Well, whoa, whoa, whoa. We don't
21 know what these people meant," and it seems to me that, like,
22 you know, what's good for the goose is good for the gander, is
23 that if we're normally going to say that, look, that these state
24 psychologists, these state corrections officers or counselors,
25 that they're trained professionals and that they do their jobs

1 well and that they take interest and pride in their work, it
2 is -- it's unfair to now, when there's something in there that's
3 mitigating or that would maybe say, "Hey, you need to take a
4 bigger look here at the crime and Mr. Brown," that suddenly
5 there's skepticism.

6 Now, the final point I wanted to make about this is you've
7 seen the video. I can't argue really what the Court might take
8 from it or not, but I think it's apparent that the bright people
9 in the room, that the people with average or above-average IQs,
10 are on law enforcement's side, and they are not dealing with
11 somebody who has their cognitive skills or goals or cognitive
12 skills or gifts, and I think when you look at that, it
13 underscores, hey, Mr. Brown doesn't know how badly he screwed up
14 and how much trouble he's gotten in, and so that's about --
15 that's all the answer I can kind of give you on that question.
16 I've got one more point, but I want you to finish with your
17 questions.

18 THE COURT: No. Those are my -- those are my main
19 concerns.

20 MR. MOYERS: Okay. And the final point I wanted to
21 make here is typically if I'm going to push, meaning the defense
22 is going to push, some sort of diminished capacity argument, the
23 defense takes on a serious risk of convincing the Court, well,
24 hey, if this person just doesn't have much agency, my concerns
25 about incapacitation and protecting the public are much, much

1 higher. What I'm arguing in this case is that that's not
2 necessarily true here, is if you look at Mr. Brown's trajectory
3 before his final term in prison, he's in gang life with the
4 Gangster Disciples. He is -- the chances that he's going to
5 come out and turn it around to even get a job, low, very low.
6 Instead of that, look, he dramatically changed his life.

7 Now, I'm not asking to say, oh, yeah, let's throw him a
8 parade because now all he's getting are misdemeanors or much
9 lower stuff, but what I'm saying is that from Mr. Brown's point
10 of view, he made dramatic changes, and what I'm saying to the
11 Court is, look, he can learn lessons. He's going to go to
12 prison for a long time, and I think that gets to sort of how I
13 want to conclude is Ms. Altman and I, we more or less agree on
14 the facts. We're just talking about what's, you know, the
15 difference here between ten years and she's arguing 20 years,
16 and our argument is, look, ten years is going to do all that,
17 and I'm loud -- she's less loud -- but the point is where does
18 that put us in that range? And I think looking at everything,
19 you can keep the public safe, you can teach him a lesson, and
20 you can get retribution, real justice, with ten years.

21 THE COURT: All right. Thank you.

22 All right. Mr. Brown, I have your written allocution, but
23 you've got the opportunity to address the Court if you want.
24 You don't have to, but you've got a right to address the Court
25 if there's anything else you want to say before I impose a

1 sentence.

2 THE DEFENDANT: No, sir.

3 THE COURT: Okay. All right. Thanks. I'm going to
4 take a brief recess, and we'll come back and finish up the
5 sentencing.

6 (Recess at 11:50 a.m. until 11:57 a.m.)

7 THE COURT: All right. I want to thank counsel for
8 their presentations, and I'm going to address the main arguments
9 in mitigation here, which is -- I think I'll work my way through
10 it this way:

11 So I'll accept Mr. Moyers' argument about the individual
12 statement, which he identified in his sentencing memo as the
13 sentencing -- or the second pitfall. That was the statement
14 about liking to "chill" with young people. I'm not going to
15 overread that statement and suggest that that's just an express
16 statement of sexual interest in children. It is, I think,
17 properly viewed as a statement that he enjoys spending time with
18 young people and that -- perhaps because of his level of
19 maturity or he likes the fact that they don't have the stresses
20 of adult life to deal with. So I'm not going to overread that
21 statement, but I'm not going to take it in isolation either
22 because the Facebook evidence and the other evidence that are in
23 the paragraphs that suggest conduct with others establishes so
24 clearly that he does have a sustained sexual interest in minors,
25 and so I don't need to overread that statement because I have

1 evidence from the defendant's own words in his Facebook
2 communication that he does, indeed, have an enduring interest in
3 minors.

4 Which gets to the second argument in mitigation about the
5 evidence of his conduct with others, and I think my questions
6 indicate my skepticism about Mr. Moyers' suggestion that I
7 should discount that evidence entirely. So, first of all, let
8 me say this: that the evidence establishes, even if it doesn't
9 establish any physical contact with any other person, it does
10 clearly establish that he has a sustained sexual interest in
11 minors. He had, in the sample that we had of the communications
12 on Facebook over a two-and-a-half-month period, he had abundant
13 exchanges of sexually explicit communications with minors as
14 well as an exchange of sexually explicit images with them. So
15 even if it didn't show anything else, it showed that he was
16 substantially engaged in not direct physical -- not necessarily
17 direct physical conduct with minors -- I use the example, I'll
18 repeat it here, of the young man in New York. There's no
19 suggestion that there was any sexual physical contact with him,
20 but nevertheless, he engaged in sexually explicit conduct and
21 received naked pictures in response with him. So it was
22 excruciatingly inappropriate, even taking it at face value.

23 But the evidence goes further than that, and I think we
24 already talked about the example when there was a reference in
25 the Facebook communication to the fact that the individual -- I

1 think that one was J.M. -- had done a good job the last time
2 that they met, so the clear implication there is that they had
3 had sexual contact. But even if I discounted all of that, we
4 still have the investigative reports, and I'll cite paragraph
5 106, where the defendant admitted that he had intended to get a
6 hotel room with two minors that day. So, again, there's no
7 suggestion necessarily that that was consummated, that they
8 actually spent the time in the hotel, but he admitted that that
9 was his intent to do that.

10 There's also the episode in which the two young men were
11 found at the apartment and both -- a 13-year-old and a
12 17-year-old. The 13-year-old was highly intoxicated. There was
13 a paper at the apartment with the defendant's name on it, and
14 then both of those young men later picked the defendant out of a
15 photo lineup to indicate that he was the person who had given
16 them the alcohol and gotten them intoxicated. So that evidence
17 on various readings, even if you just take it at face value and
18 deal with the Facebook communications, they themselves
19 demonstrate that he has a sustained interest in children.

20 When I look at the broader sweep of the evidence that comes
21 from the police investigation, the defendant's own concessions,
22 it's a very long period of time in which he had engaged in
23 inappropriate conduct with children, plying them with alcohol,
24 and I think those are established way beyond a preponderance of
25 the evidence. I don't have to reach the conclusion that he

1 actually did engage in physical sexual conduct with other
2 children beyond those that have been established here in the
3 offense of conviction to see that it is his intent and his
4 interest to have sexual contact and sexual communications with
5 children.

6 The third argument, the main argument in mitigation, is Mr.
7 Brown's diminished capacity. I understand it's a strategic
8 choice that the defense has made not to put in the full evidence
9 of Mr. Brown's mental health records that would allow me to make
10 a more complete evaluation of his mental capacity and any other
11 factors that might impact his decisionmaking, that might
12 diminish his culpability, but the strategic choice -- I infer
13 from Mr. Moyers' comments that it's probably a mixed bag, and so
14 it was a strategic choice to be made that there might have been
15 aggravating material there as well as mitigating material. I
16 simply don't have it to evaluate, so I don't know what's in that
17 material, but what I'm left with then is just the IQ test from
18 when he was 14 years old when he was clearly a defiant and
19 difficult young man, and so I have no way that I can extrapolate
20 from that one isolated IQ test that he really is -- suffers from
21 a significant cognitive impairment. And so it's just not
22 established to a preponderance, and I am not persuaded by the
23 argument that he really does have a diminished capacity that
24 would reduce his culpability.

25 The bottom line here is that the evidence is ample here that

1 Mr. Brown is a dangerous sexual predator, and whether he does it
2 because of his affection for young people, the bottom line is
3 that it shows that he has engaged in very dangerous activity and
4 is willing to ply young people with intoxicants to get them to
5 do what he wants, and I do think that Ms. Altman is right that
6 the victim's account of what happened in the hotel room with
7 Victim No. 1 is more credible than Mr. Brown's statement. Mr.
8 Brown has made statements about matters large and small
9 throughout the record that can't be verified. He doesn't have
10 the correct information about the address or the streets of his
11 employment. He doesn't have the dates right, and so he has
12 proven himself to be a very inaccurate historian of his own
13 biography as well as I think has a strong motivation to minimize
14 his culpability for the events at the hotel room, and so I do
15 find that the victim's explanation of the events at the hotel
16 room are the more accurate ones, and, therefore, establish by a
17 preponderance, because I've got potentially two accounts of
18 it -- I believe the victim's story about it -- and that incident
19 suggested some very strongly coercive behavior on the part of
20 Mr. Brown.

21 Accordingly, I'm going to sentence within the guidelines,
22 and the guideline range is 240 months. It's at the statutory
23 maximum. I'm also going to impose a lifetime of supervised
24 release on Mr. Brown as well. It's clear to me that, given the
25 pattern of his conduct, that we can never be completely safe

1 without close supervision. So I'm going to impose the maximum
2 term of incarceration that I can followed by a lifetime term of
3 supervised release.

4 I did not get any objections to the conditions of supervised
5 release, and so I'll ask Mr. Moyers if there are any concerns or
6 any input that he would like to have now on the conditions that
7 are proposed in the presentence report.

8 MR. MOYERS: No objections, Your Honor.

9 THE COURT: All right. Very good. So the following
10 conditions are going to be imposed: It's conditions 1 through
11 9. Those are among our standard conditions of supervision in
12 the district. Condition 11, another standard condition, is also
13 imposed, and then special conditions 12 through 24 are imposed.
14 The Circuit suggests that I read these conditions into the
15 record and justify them unless the defendant waives that
16 activity, and so I'll ask if there's a waiver of that.

17 MR. MOYERS: Yes, there is.

18 THE COURT: Okay. Mr. Brown, these are the conditions
19 that will govern your conduct after your incarceration is over.
20 These are the conditions that -- I won't read them into the
21 record here because it would take a long time and it's tedious.
22 They're amply justified in the report, and I've reviewed them,
23 and they're justified here, but I will tell you to read them
24 over with Mr. Moyers, make sure you understand them, and it
25 makes more sense to do it in writing when you've got somebody to

1 talk it over with anyway. It's more effective than having me
2 drone on about it.

3 But I'll say this: These are the conditions I will predict
4 will be appropriate when you're released. If, at that time when
5 you're released and these conditions begin to govern your
6 conduct, you think they need to be revised or amended,
7 additional conditions added or some dropped off or modifications
8 to these conditions, you can make a motion to the Court to do
9 that, and the government or the probation office can do the same
10 thing, so these conditions are not unchangeable. They can be
11 modified as necessary as we get into the future and when they
12 begin to pertain.

13 So let me make sure we cover the rest of the formalities of
14 the sentence. As I said, as to Count 1 of the information, it
15 is adjudged that the defendant is committed to the custody of
16 the Bureau of Prisons for a term of 240 months. I recommend
17 that the defendant receive educational and vocational training.
18 I also recommend that the defendant participate in substance
19 abuse treatment, including an RDAP program. Also that he
20 undergo a mental health evaluation and subsequent treatment if
21 that is deemed necessary. I think the presentence report
22 indicates that Mr. Brown has both some potential mental health
23 issues as well as some substance abuse problems that should be
24 addressed in prison. I don't have a good picture of all of
25 that, but I think it's appropriate that the Bureau of Prisons

1 conduct a careful screening on both the substance abuse issues
2 and mental health issues and that he receive appropriate
3 treatment.

4 I also recommend that the defendant be afforded prerelease
5 placement in a residential re-entry center with work release
6 privileges.

7 The defendant has a pending case in Winnebago County,
8 Illinois. That's Circuit Case No. 2003-CM-6753 for conduct
9 unrelated to the instant federal offense. I have the discretion
10 to decide how that sentence should run. I don't know why the
11 2003 case is still open, but I have imposed a statutory maximum
12 term on Mr. Brown. It makes sense under these circumstances,
13 although it's unrelated conduct, given the comprehensive nature
14 of the sentence and the lifetime of supervision, I'm going to
15 order that any sentence that would result from the Winnebago
16 County case run concurrent to the federal offense.

17 We've already discussed supervised release and the
18 justification for those conditions.

19 The defendant is adjudged that he is to pay the mandatory
20 \$100 criminal assessment penalty to the Clerk of Court for the
21 Western District of Wisconsin immediately following sentencing.
22 The defendant is to pay mandatory restitution to the U.S. Clerk
23 of Court for the Western District of Wisconsin. However, at
24 this point at least, restitution has not been requested, so I
25 don't know how we handle that. Is there the time open still for

1 people to submit restitution requests or how should we --

2 MS. ALTMAN: I would ask -- I'm sorry, Your Honor. I
3 didn't mean to interrupt. I would ask that we would leave it
4 open for 60 days. We will touch base with the victim one more
5 time, tell them that is the time limit, and if they can't get us
6 something by that date, then I don't think that there are other
7 options that I'm aware of.

8 THE COURT: All right. Very good. I'll do that. I'll
9 hold this open. There's been no request so far for restitution,
10 but I'll give the victim 60 days yet to submit a request for
11 restitution, and then hopefully the parties can agree on the
12 amount. If not, we'll schedule a hearing to resolve the amount
13 of restitution.

14 I do find that the defendant does not have the means to pay
15 a fine under guideline Section 5E1.2(c) without impairing his
16 ability to support himself upon release from custody, so I will
17 not impose a fine.

18 Based on the offense of conviction, the defendant is
19 required to pay a \$5,000 assessment under the Justice for
20 Victims of Trafficking Act of 2015 unless he is indigent. The
21 defendant has been appointed counsel, does not have the
22 financial resources to pay his assessment, and so I find that
23 the defendant is, in fact, indigent, and the assessment is,
24 therefore, waived.

25 The probation office is to notify local law enforcement

1 agencies and the state attorney general of the defendant's
2 release to the community.

3 I'm going to inform the defendant of his residual right to
4 appeal. I notice that there is an appeal waiver in the plea
5 agreement that waives his right to appeal if I sentence within
6 the guidelines, which I have, so there's not much left of the
7 right to appeal, but there could be some residual rights to
8 appeal, and so, Mr. Brown, ordinarily you'd have a right to
9 appeal your conviction and the sentence. You've waived those
10 rights, but it's still conceivable that there might be some
11 remaining rights if there were some deficiency in the process
12 here.

13 What I want to do is tell you that if you think that you
14 have any basis for appeal, you have to file a notice of appeal
15 within 14 days of entry of judgment in this case or within 14
16 days of any notice of appeal that's filed by the government. If
17 you can't afford the filing fee for the appeal, you can apply
18 for leave to appeal in forma pauperis, which means without
19 paying the filing fee, and if you can't afford an attorney to
20 represent you in the appeal, you can also apply for
21 court-appointed counsel in the appeal. And so that is your
22 notice of your right to appeal.

23 Is there anything else we have to take care of today?

24 MS. ALTMAN: Yes, Your Honor. The defendant pled to an
25 information. There is still a pending indictment that -- I

1 would move that that be dismissed.

2 THE COURT: All right. I will dismiss the indictment.
3 Okay.

4 MS. ALTMAN: Nothing else. Thank you.

5 THE COURT: All right. Very good. Mr. Moyers?

6 MR. MOYERS: I think we got it all.

7 THE COURT: All right. Thank you -- let's check with
8 probation. Did I miss anything?

9 AGENT HARRIS: No. Thank you.

10 THE COURT: All right. Very good. Thank you, all.

11 THE CLERK: This court stands adjourned.

12 (Proceedings concluded at 12:12 p.m.)

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1 I, JENNIFER L. DOBBRATZ, Certified Realtime and Merit
2 Reporter in and for the State of Wisconsin, certify that the
3 foregoing is a true and accurate record of the proceedings held
4 on the 21st day of December, 2017, before the Honorable James D.
5 Peterson, Chief U.S. District Judge for the Western District of
6 Wisconsin, in my presence and reduced to writing in accordance
7 with my stenographic notes made at said time and place.

8 Dated this 5th day of February, 2018.
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14 /s/ Jennifer L. Dobbratz

15 Jennifer L. Dobbratz, RMR, CRR, CRC
16 Federal Court Reporter
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